

APPEAL NO. 020774
FILED MAY 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) on attorney's fees was held by telephone on February 19, 2002. This was held on remand of the hearing officer's previous approval of some claimed fees and disallowance of others. Texas Workers' Compensation Commission Appeal No. 012714, decided January 2, 2002. The decision on remand approved additional time for travel but then cut the previously awarded fees by almost \$500.00. The appellant (attorney) has appealed, arguing both that this is an abuse of discretion and that the hearing officer's determination is in error. There is no response from either the claimant or the carrier.

DECISION

Affirmed in part; reversed and rendered in part.

The attorney has argued that the hearing officer has abused his discretion and exceeded the scope of the remand. As we review the remand language, it appears that the language used was broad enough to include the actions taken by the hearing officer, including review of amounts he might previously have allowed in violation of the guidelines set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4). We would agree that circumstances under which a hearing officer, in effect, "second guesses" his previous award should be limited and fully supported by the evidence. One factor in this case necessitating remand was that the justification text had not been submitted to the Appeals Panel and it was not clear at the time of the original appeal that one had been furnished.

COPYING CHARGES

The hearing officer had questions about the time spent identifying the registered agent (on July 18, 2001) and for copying charges. The attorney affirmed that the photocopies made, and claimed as the cost of "records," were, in fact, preparation for exchange of copies of documents admitted at the CCH.

We first affirm the disallowance of some of the copying charges. We agree that such charges are not allowed under Rule 152.5(c)(2). Allowable records expenses cited under Rule 152.5(b)(3) plainly refer to the cost of records obtained from third parties which are required.

PREPARATION FOR AND ATTENDANCE AT THE CCH

We affirm the additional 0.8 hour travel time allowed on remand. The hearing officer noted that the amount claimed by the attorney for the attendance at the CCH exceeded the time actually spent at the CCH. The hearing officer stated that the CCH took 85 minutes;

the tape indicated that it started eight minutes late. Because the hearing officer agreed that 1.6 hours was allowable as the time of the CCH, he has apparently allowed for early arrival of counsel and late starting time. The guidelines allow an additional 4.0 hours for preparation and require a justification for allowing more hours. While reasonable minds could differ, we will not second guess this determination of the hearing officer, who actually heard the case and is familiar with the charges in the vicinity. We also agree that the justification tends to be more global and, in effect, simply indicates that "x" time was expended because it was necessary to do so; thus, no clear basis for reversing the hearing officer's decision is furnished.

However, we agree that the hearing officer abused his discretion by recasting 2.7 hours claimed as direct dispute resolution/negotiation as CCH preparation time. There was no evidence to show that these contacts with the opposing party did not occur and were not part of informal resolution processes. We would note that while many of the services, such as informal dispute resolution or client communications, could have a preparatory effect, the Texas Workers' Compensation Commission has allowed for such services to be claimed separate and apart from direct participation in (and preparation for) the CCH. Therefore, "zeroing out" these 2.7 hours with no factual basis for doing so was error, and we reverse and render a decision restoring approval of those hours.

In summary, we affirm in part and reverse in part, as follows: we affirm the decrease of \$41.10 to the records fee. We affirm the additional \$108.00 allowed for travel time. And we reverse the deduction made on remand of 2.7 hours claimed as informal resolution. Given the adjustments we affirmed and reversed, an attorney's fee in the total amount of \$1,927.04 is approved.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCURRING OPINION:

I cannot recommend affirmance of the hearing officer's entire decision because of a break in the logical flow in the hearing officer's complicated, controversial, and highly irregular stated rationale for approving attorney's fees in this case. That logical break involved what my fellow judges have described as recasting by the hearing officer of 2.7 hours claimed from a "direct dispute resolution/negotiation" activity to a "contested case hearing preparation time" activity. I do not believe the hearing officer was simply attempting to recast the 2.7 hours from one activity to another.

Robert E. Lang
Appeals Panel
Manager/Judge